

Appendix D

Antidumping Duties, Title VII of the Tariff Act of 1930, as Amended

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Procedures The antidumping provisions of Title VII of the Tariff Act of 1930, which were added to the law by the Trade Agreements Act of 1979, are intended to prevent unfair foreign competition created by price discrimination or below-cost pricing. These provisions replaced the Antidumping Act of 1921.

Antidumping duties are imposed when the Department of Commerce determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at "less than fair value" and the U.S. International Trade Commission (USITC) also determines that, because of imports of that merchandise, an industry in the United States is materially injured, threatened with material injury or its establishment is materially retarded. The duty equals the "dumping margin" — the amount by which the "foreign market value" exceeds the U.S. price for the merchandise.

Sales at "less than fair value" exist whenever the price of goods exported to the United States is less than the price at which such or similar goods are sold in the market of the exporting country for home consumption. If too few sales

have been made in the home market to provide an adequate basis for calculating a fair value, alternative methods are provided in the law.

An antidumping investigation is initiated either by 1) a producer, wholesaler, union or trade association filing an acceptable petition simultaneously with the Department of Commerce and the USITC, or by 2) the Department of Commerce on its own initiative, if available information indicates dumping may be occurring.

After a case is initiated, the first step in the process is a determination by the USITC of whether there is reasonable indication of material injury, the threat of material injury or material retardation of the establishment of an industry. If the preliminary USITC determination is negative, the case is terminated.

If the USITC finds reasonable indication of material injury, the Department of Commerce will make a preliminary determination of whether sales of less than fair value exist. If this preliminary determination is affirmative, the Department of Commerce orders the "suspension of liquidation" (i.e., the final assessment of duties on the product

is suspended). Products covered by such suspension may enter subject to the posting of security equal to the estimated average dumping margin. If the preliminary determination is negative, there is no suspension of liquidation.

Within 75 days (135 days if an extension is granted) after the preliminary determination, the Department of Commerce makes a final determination of sales at less than fair value. If the final determination is negative, the investigation is terminated and all estimated antidumping duties are refunded and all bonds or other securities are released.

Following a final affirmative determination by the Department of Commerce, the USITC makes its final injury determination within 45 days. Both the Department of Commerce and the USITC must arrive at affirmative final determinations for an Antidumping Duty Order to be issued. The antidumping duty is equal to the amount of the dumping margin.

Listed below is the latest available information prior to the report's publication.

Antidumping Actions in 1982

I. Final Affirmative Determinations of Sales at Less than Fair Value (as of December 1982)

Products	Country	Trade Vol. \$Mil
High Power Microwave Amplifiers and Components	Japan	3.3
Stainless Clad Steel Plate	Japan	N/A
Steel Wire Nails	Korea	58.5
Fireplace Mesh Panels	Taiwan	Confidential
Prestressed Concrete Steel Wire Strand	U.K.	(0)
Carbon Steel Wire Rod	Venezuela	(0)

Appendix H

Escape Clause Action: Sections 201-203, Trade Act of 1974

Procedures Presidential authority to grant import relief, commonly known as escape clause or safeguard provisions, has been included in trade agreements legislation in varying forms since 1951. This authority is presently contained in Title II, Section 201, of the Trade Act of 1974. Title IV also contains special provisions which apply when imports from Communist countries are found to disrupt domestic markets.

An escape clause action is usually initiated by a petition from the industry involved to the U.S. International Trade Commission (USITC) which investigates and reports to the President. All of the following conditions must be met for the Commission to find affirmatively and recommend import relief:

1. Imports are increasing, either actually or relative to domestic production;

2. A domestic industry producing an article like or directly competitive with the imported article is being seriously injured or threatened with such injury;
3. The increased imports are a substantial cause of the serious injury or threat thereof to the domestic industry producing a like or directly competitive article.

No further action is taken if the Commission finds that the statutory criteria are not met. When the finding is affirmative or the Commission is evenly divided in recommending relief, the Executive Branch agencies concerned with foreign trade examine the matter and report to the President. No later than 60 days after the Commission's report, the President determines what remedy, if any, is in the national economic interests.

The types of remedies authorized by the Trade Act of 1974 either singly or in combination are tariff increases, tariff-rate quotas, quantitative import restrictions and orderly marketing agreements. As an alternative or as a supplement, the President may also direct that expedited adjustment assistance be provided for firms and workers in the injured industries and for communities impacted by the injurious imports.

When the USITC recommends relief and the President does not implement the recommendation, he must promptly report to the Congress his reasons for not doing so. In such cases, the Trade Act of 1974 provides that Congress may, by concurrent resolution passed by majority vote in both Houses, order the Commission's remedy be put into effect.

Appendix F

Unfair Import Practices: Section 337, Tariff Act of 1930, As Amended

Section 337 of the Tariff Act of 1930 declares unlawful unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer or consignee, the effect of which is to substantially injure a domestic industry, or to prevent the establishment of a domestic industry. The U.S. International Trade Commission (USITC) investigates alleged violations and, if a violation is found, is empowered to issue an exclusion order prohibiting the importation of the merchandise involved or a cease and desist order. The President may disapprove the Commission determination for policy reasons within 60 days. (Dumping, and certain other unfair trade practices,

are covered by separate provisions in the Tariff Act of 1930, as amended, and therefore are not within the purview of Section 337.)

Patent infringement was the principal allegation in all but 15 investigations conducted under Section 337 from July 1, 1982 to July 31, 1983. The exceptions, in which the unfair trade practices most frequently alleged were copyright infringement, common law trademark infringement, passing off and false designation of origin, were: certain coin-operated audio-visual games (Inv. 337-TA-105); certain vacuum bottles (Inv. 337-TA-18); certain cube puzzles (Inv. 337-TA-112); certain power woodworking tools (Inv. 337-TA-115); certain sneakers with fabric

uppers and rubber soles (Inv. 337-TA-118); certain high precision solenoids (Inv. 337-TA-119); certain grooved wooden handle kitchen utensils (Inv. 337-TA-125); certain handbags, luggage and brief cases (Inv. 337-TA-126); certain cupric hydroxide formulated fungicides (Inv. 337-TA-128); certain braiding machines (Inv. 337-TA-130); certain hand-operated, gas-operated welding, cutting and heating equipment (Inv. 337-TA-132); certain vertical milling machines (Inv. 337-TA-133); certain heavy-duty staple gun tackers (Inv. 337-TA-137); certain copper-clad stainless steel cookware (Inv. 337-TA-141); and certain plastic food storage containers (Inv. 337-TA-152).

Activities from July 1, 1982 – July 31, 1983

1. USITC findings of violation of Section 337:

Article	USITC Remedy
Certain coin-operated audio-visual games and components thereof	Exclusion order
Certain methods for extruding plastic tubing	Exclusion order
Certain cube puzzles	Exclusion order
Certain miniature plug-in blade fuses	Exclusion order
Certain sneakers with fabric uppers and rubber soles	Exclusion order
Certain silica-coated lead chromate pigments	Exclusion order

2. USITC finding of no violation of Section 337:

Article
Certain card data imprinters and components thereof
Certain vacuum bottles and components thereof
Certain drill point screws for dry wall construction
Certain miniature, battery-operated, all terrain wheeled vehicles
Certain amino acid formulations
Certain braiding machines

the President may take action prior to the Commission's investigation and report.

Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854)

Under section 204 of the Agricultural Act of 1956, the President may, when he determines such action is appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries, and the importation into the United States, of any agricultural commodity, manufactured product, textiles, or textile products therefrom. The President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carryout any such agreement. In addition, if a multilateral agreement has been or will be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles concerned, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement.

C. Miscellaneous Remedies

International Emergency Economic Powers Act (50 U.S.C. 1701)

Section 205 of the International Emergency Economic Powers Act grants the President emergency authority to regulate foreign exchange transactions, transfer of audit or payments between banking institutions where a foreign interest is involved, import or export of currencies or securities, and to control or freeze property transactions where a foreign interest is involved. The President may exercise this authority only to respond to an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy or economy of the United States."

The President is required to consult with, and report to, Congress regularly with regard to any actions taken under the authority of this statute.

Trading with the Enemy Act (50 U.S.C. App. 9, 16)

This Act prohibits trade with any enemy or ally of an enemy during time of war. The powers granted the President under this statute are broad, but they may be exercised only when Congress has declared a state or war. The provisions of the Act define with specificity what actions are covered and how the Act is to be administered.

Appendix G

Unfair Foreign Practices and Violations of U.S. Rights Under Trade Agreements: Section 301 of the Trade Act of 1974, as Amended

Procedures Under section 301 of the Trade Act of 1974, as amended, the President is authorized to take all appropriate action, including retaliation, to obtain removal of any act, policy, or practice of a foreign government which is found to violate an international trade agreement or is found to be unjustifiable, unreasonable, or discriminatory and which burdens or restricts U.S. commerce.

Section 301 investigations are administered by USTR with the advice of the interagency 301 committee. The resolution of most cases is the result of negotiations and, where appropriate, the formal dispute settlement procedures of applicable international agreements. Each case must be decided within the time limits required by section 304 of the Trade Act of 1974, as amended.

As of the end of 1983, the following cases were pending before the Office of the U.S. Trade Representative (USTR), pursuant to Section 301 of the Trade Act of 1974 (P.L. 93-618, 88 Stat. 1978, January 3, 1974, as amended).

Wheat Flour (EC) The Millers' National Federation filed a Section 301 petition in December 1975, alleging that the European Economic Community (EC) violated its international obligations under GATT Article XVI:3 by using export subsidies to gain more than an equitable share of world trade in wheat flour. After numerous consultations with the EC, USTR decided in September 1981 to pursue this case under the Subsidies Code. Consultations with the EC were held on October 28, 1981 and the conciliation phase of

dispute settlement was completed on December 14, 1981.

The case was presented to a three-member Subsidies Code panel from February to April 1982. The panel report found that EC subsidies were not inconsistent with some code provisions and failed to make findings with respect to other provisions. The panel report has been discussed in four code meetings but has not yet been acted upon. Bilateral discussions are being held in an effort to resolve this issue.

Citrus Fruit (EC) In 1976 citrus interests in Florida, California, Arizona and Texas filed a petition with USTR alleging that preferential import duties established by the EC for imports of citrus fruit and juices from certain Mediterranean countries have an adverse effect upon U.S. citrus producers.

During the Toyko Round of the MTN, representatives of the United States sought reductions in EC duties on citrus products. The EC agreed to reduce the duty on fresh grapefruit from 4 to 3 percent *ad valorem* but no reductions on other items were forthcoming. Following the MTN negotiations, further bilateral discussions were held and formal consultations under GATT Article XXII:1 were held in October 1980. In March 1982, the United States requested consultations with the EC under Article XXIII:1 of the GATT. They were held on April 20, 1982. The United States requested a GATT panel at meetings of the GATT Council on June 29 and July 21, 1982; however, because there was disagreement in the Council about the propriety

of the U.S. request, the United States agreed to attempt conciliation using the offices of the GATT Secretariat. Conciliation efforts were unsuccessful and a panel was established at the November 1982 GATT Council meeting. The case is currently being argued before a GATT panel.

Poultry (EC and Brazil) On October 28, 1981, USTR initiated an investigation of EC export subsidies on poultry. This action was taken in response to a petition filed by the National Broiler Council and others alleging that the poultry subsidy programs of the EC and France adversely affect U.S. commercial interests. Consultations with the EC under the Subsidies Code were held on February 16, 1982 in Geneva. After it became clear that Brazil was also subsidizing exports to the same markets, on July 12, 1982 the President directed the expeditious examination of Brazilian subsidies. Informal consultations with Brazil concerning its export subsidies on poultry were held on August 30, 1982 and formal consultations with Brazil under the Subsidies Code were held in April 1983. The United States held further consultations with the EC on October 7, 1982.

The Broiler Council petition makes two basic allegations: a) EC export subsidies on whole chickens violate Article 10 of the Subsidies Code in that the EC, through such subsidies, has obtained more than an equitable share of world trade in whole chickens and has displaced U.S. chicken exports to specific markets, including the Middle East and the Caribbean; and b) EC

Appendix E

Countervailing Duties: Title VII of the Tariff Act of 1930, as Amended

Procedures Section 303 of the Tariff Act of 1930, originally enacted in 1897 and amended most recently by the Trade Act of 1974, provides that whenever a "bounty or grant" is paid or bestowed in a foreign country "upon the manufacture or production or export of any article or merchandise manufactured or produced in such country," a duty equal to the amount of the bounty or grant is to be levied upon imports of such article into the United States. The purpose of this provision is to offset any unfair competitive advantage that might be gained over U.S. producers because of foreign subsidies.

Before January 1, 1980, when the Trade Agreements Act of 1979 went into effect, the countervailing duty law operated without regard to injury in any case in which dutiable merchandise benefiting from a bounty or grant was imported into the United States.

A material injury test was added to the U.S. law by Title VII of the Tariff Act of 1930 as amended in 1979 for imports from "countries under the Agreement" — including countries to which the United States applies the Subsidy/Countervailing Duty Measures Code negotiated in the Tokyo Round of Multilateral Trade Negotiations. For imports from these countries, countervailing duties will be assessed

only if they benefit from a subsidy as defined by Title VII of the Tariff Act of 1930, and there has been a positive determination that the subsidized imports caused material injury or threat of material injury to U.S. industry.

A countervailing duty investigation is initiated when either 1) a satisfactory petition is filed with the Department of Commerce (and with the U.S. International Trade Commission when injury must be determined), or 2) the Department of Commerce, on its own initiative, determines from available information that a formal investigation is warranted.

For cases where injury must be determined the USITC must, within 45 days after a petition is filed, make a preliminary determination whether there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury because imports of the merchandise are alleged to be subsidized. If the determination is negative, the investigation is terminated.

The Department of Commerce must make a preliminary determination within 85 days after a petition is filed, but not before the USITC preliminary injury determination, of whether a subsidy is being provided. If the determination is affirmative, the Department of

Commerce orders the suspension of liquidation and the posting of security equal to the estimated net subsidy on each entry.

Within 75 days after its preliminary determination, the Department of Commerce must make a final subsidy determination. If the final determination is negative, the case is terminated. If the final decision is affirmative, and injury must be determined, the USITC must make a final injury determination within 45 days after a Department of Commerce affirmative final decision. If the Department of Commerce preliminary determination is negative, the USITC must make its final determination 75 days after the Commerce affirmative final decision.

If final determinations by both the Department of Commerce and the USITC are affirmative, a countervailing duty order is issued by the Department of Commerce directing the assessment of a countervailing duty on the merchandise from the country under investigation equal to the amount of the net subsidy. The countervailing duty order remains in place until it is revoked by the Department of Commerce.

Listed below is the latest available information prior to the report's publication.

Countervailing Duty Actions in 1982

I. Final Affirmative Countervailing Duty Determinations (as of December 31, 1982)

Products	Country	Trade Vol.
Ceramic Wall Tile	Mexico	N/A
Carbon Steel Wire Rod	France	101,921 tons
Certain Steel Products	Korea	Pipe and Tube 559,000 tons